REMARKS

Responsive to the requirement for restriction, applicants elect Group I, claims 1-9 and 23-25, with traverse.

The restriction requirement is similar to the restriction requirement imposed in the parent application (United States Patent Application 09/812,839) on April 23, 2002. In view of the present restriction requirement, applicants add new claims 23-25. New claims 23-25 are similar in scope to those presented in the parent application are drawn to a method of treating or alleviating depression, carbohydrate craving, chocolate craving, and/or erectile dysfunction, comprising administering to a subject in need of such treatment an effective amount of cocoa extract, or a pharmacologically active component of cocoa and at least one plant-derived dopamine D2 receptor agonist.

Applicants believe that that the restriction requirement is improper and request that it be withdrawn for the following reasons:

In imposing the restriction requirement, the Official Action alleged that groups I+II and III-VIII were related as a process of making and product made. The Official Action cites to MPEP § 806.05 (f) and contends that restriction is proper if it can be shown that 1) the process as claimed can be made by another materially different product or 2) that the product as claimed can be made by another materially different process.

However, the Official Action fails to satisfy either requirement. Rather, in support of the rejection, the Official Action states that the claimed methods can be carried with different products. A rationale that does not 1) the process as claimed can be made by another materially different product or 2) that the product as claimed can be made by another materially different process. As a result, applicants respectfully submit that the Office Action fails to meets its burden in showing that the restriction requirement is proper.

In addition, the Official Action alleges that groups III-VIII are unrelated. However, the Official Action fails to show that any of the disclosed inventions are not capable of use together, have different modes of operation, exhibit different functions, or have different effects.

Indeed, it should be noted that Vitex Agnus Castus and Cimicifuga Racemosa are dopamine D2 receptor agonists. The claimed invention does not describe the use of cocoa or a dopamine D2 receptor agonist and a third ingredient, but rather describe a composition containing cocoa components thereof and the additional components respectively, as further listed on page 13, lines 6-31 of the application as filed.

The invention thus relates to a composition comprising cocoa or components thereof and a dopamine D2 receptor agonist, wherein the dopamine D2 receptor agonist may for example be Vitex Agnus Castus or Cimicifuga Racemosa.

The claims describe a composition and method for its use, wherein the composition comprises cocoa or components thereof and a dopamine D2 receptor agonist in a composition that possesses medical utilities levels according to a preferred embodiment. It is applicants' opinion that this is a common way of claiming preferred embodiments, i.e., advantageous additions, of an invention, i.e., the claims are presented in dependent form, referring back to and further limiting another claim in the same application by way of including a further ingredient.

Thus, in view of the above, applicants believe that the restriction requirement is improper and must be withdrawn.

Please charge the fee of $54 for the three extra claims of any type added herewith to Deposit Account No. 25-0120.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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